

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA INFANTE
Claimant

VS.

IBP, INC.
Respondent
Self-Insured

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Docket No. 204,462

ORDER

Claimant appeals from an Order entered by Administrative Law Judge Floyd V. Palmer on February 11, 1998. Jeff K. Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary Korte who recused himself from this proceeding.

ISSUES

The issue on appeal is whether the Administrative Law Judge erred when he entered an Order allowing an additional deposition of claimant. Claimant contends that the Administrative Law Judge erred by allowing respondent to take additional deposition testimony from claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the issue raised in this appeal is not one subject to review at this stage of the proceedings and the appeal should be dismissed.

Claimant previously appealed an order by the Administrative Law Judge which denied claimant's request to quash the deposition of Rueben Garza. That deposition was for the purpose of introducing certain records relating to claimant's unemployment compensation proceedings. That previous appeal was filed April 9, 1997. The Board entered an Order on November 25, 1997, reversing the decision by the Administrative Law Judge. The Board found that administrative regulations prohibit the introduction of those records under the circumstances presented in this case.

After the decision on the previous appeal, respondent sent notice of its intent to take additional deposition testimony from the claimant. That additional deposition testimony

was apparently to address issues in the unemployment compensation proceedings. By the Order dated February 11, 1998, the Administrative Law Judge granted respondent's request.

After the first appeal relating to the deposition of Rueben Garza but before the current appeal relating to the deposition of claimant, the Legislature changed the statute authorizing appeals to this Board. Effective July 1, 1997, K.S.A. 44-551 provides that appeals may be taken only from final orders, awards, modifications of awards, or preliminary awards. The previous version of the statute did not limit the appeals to final orders. The current Order is not a final order, award, modification of an award, or a preliminary hearing award. Therefore, the Order is not subject to review at this stage in the proceedings. For that reason, the Order entered by Administrative Law Judge Floyd V. Palmer remains in effect as originally entered.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's appeal should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Office of Administrative Law Judge, Topeka, KS
Philip S. Harness, Director